

**ORDINANCE \_\_\_\_\_**

AN ORDINANCE relating to public art museum facilities; approving and authorizing the execution of certain consents and waivers in connection with the existing guarantee and reimbursement agreement with the Museum Development Authority and other parties; and ratifying and confirming certain prior acts.

WHEREAS, Ordinance 121950 authorized a City guarantee for the debt service reserve established in connection with the Museum Development Authority's 2005 special obligation bonds (issued to pay the cost of acquiring and equipping an addition to its downtown museum facilities), pursuant to a guarantee and reimbursement agreement between the City, the Museum Development Authority, and other parties, which was executed and dated as of November 1, 2005; and

WHEREAS, Ordinance 122458 authorized certain amendments to that guarantee and reimbursement agreement, memorialized in an amended and restated guarantee and reimbursement agreement, which was executed and dated as of October 1, 2007; and

WHEREAS, the Seattle Art Museum has secured a lease with Nordstrom, Inc that will replace revenue that was originally expected to be received under a lease with Washington Mutual Bank ("WaMu"), which revenue was lost following the rejection of that lease by successors to WaMu; and

WHEREAS, Ordinances 121950 and 122458 delegated to the Director of Finance the authority to execute certain consents and waivers and to exercise limited discretion under the guarantee and reimbursement agreement, but did not anticipate circumstances that now require consents, waivers and clarifications by the parties to the agreement; and

WHEREAS, due to reorganization, it is now deemed in the best interests of the City to redirect such delegation to the Director of Finance and Administrative Services; and

WHEREAS, it is in the interest of the City to authorize, by this ordinance, certain specific actions that require the approval of the City Council under the terms of Ordinances 121950 and 122458; NOW THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. Delegation of Authority. The Director of Finance and Administrative Services, or the City officer succeeding to the duties of that office ("Director of FAS") is granted the authority to take all actions previously delegated to the Director of Finance in

Ordinances 121950 and 122458 and under the terms of the “Amended and Restated Guarantee and Reimbursement Agreement” (the “Guarantee Agreement”) by and among the City, the Museum Development Authority of Seattle (“MDA”), the Seattle Art Museum (“SAM”), U.S. Bank National Association as Bond Trustee, and U.S. Bank National Association, as Lockbox Agent, dated as of October 1, 2007 and the related Security Documents. Such actions may be taken in the future by the Director of Finance only to the extent that he or she is acting as the designee of the Director of FAS or upon future delegation of such authority.

Section 2. Approval of Lease Arrangements. The Director of FAS is authorized to grant certain consents and waivers in relation to leasing arrangements entered into by SAM, as landlord, that are deemed to be in the best interests of the parties to the Guarantee Agreement, given current market conditions. Such waivers and consents shall be given in written form executed by the Director of FAS and by authorized representatives of SAM and MDA. Those waivers and consents include the following, if deemed necessary, appropriate or desirable by the Director of FAS:

A. a waiver of the application of the Coverage Requirement under Section 5.3 of the Guarantee Agreement during the period affected by the rejection of the Washington Mutual lease through the end of the bond year ending September 30, 2018. In addition to waiving past noncompliance with the Coverage Requirement through the bond year ending September 30, 2012, the waiver may permit the Coverage Requirement for the bond years ending September 30 of 2013, 2014 and 2015 to be equal to not less than 1.0 times Annual Debt Service; and for the bond years ending September 30 of 2016, 2017 and 2018 to be equal to not less than 1.09

1 times Annual Debt Service. No additional waiver of the Coverage Requirement shall be  
2 permitted under this ordinance; and

3 B. consent to a clarification that, in the context of an Office Space Lease that covers  
4 the Museum Expansion Unit space and other space in a single lease, reference to “all rent”  
5 from any Office Space Lease (as that term is used in the Guarantee Agreement and the related  
6 Security Documents) means only the rent proceeds generated from the lease of Museum  
7 Expansion Unit space, and the requirement that “all rent” from any Office Space Lease be paid  
8 to the Lockbox Agent refers to the rental proceeds allocated to the Museum Expansion Unit  
9 space, provided that rent components under such a lease are allocated on a square footage basis  
10 or on another similar basis that is reasonable in the judgment of the Director of FAS; and  
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12 C. consent to additional indebtedness incurred by MDA and SAM under the limitations  
13 of Section 5.6 of the Guarantee Agreement in accordance with the following:  
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15 1. SAM is permitted to have an aggregate maximum of \$28,000,000 of  
16 indebtedness outstanding at any given time, and is not required to seek additional City consent  
17 for indebtedness issued or incurred under this ceiling. Any borrowing from or secured by  
18 endowment funds shall be included in the calculation of indebtedness under this ceiling.  
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20 2. If at any time, SAM desires to incur debt in excess of this ceiling, it may  
21 do so only upon consent given in writing by the Director of FAS, acting in his sole discretion  
22 and without requiring additional authorization from the City Council, but only insofar as the  
23 aggregate amount of debt outstanding (including the proposed debt and all outstanding debt)  
24 will not exceed \$40,000,000. The consent of the Director of FAS is specific to the debt being  
25 issued and does not act to raise the ceiling described in Section 2.C.1, above. If the aggregate  
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1 amount of debt outstanding plus the debt proposed to be incurred exceeds \$40,000,000, the  
2 Director of FAS may consent only upon additional authorization by a resolution or ordinance  
3 of the City Council.

4 3. If MDA desires to incur any additional debt at any time during which  
5 SAM has any debt outstanding as described in paragraphs 1 and 2 of this Section 2.C, MDA  
6 may incur such additional debt only upon consent of the Director of FAS given upon additional  
7 authorization by a resolution or ordinance of the City Council; and

8  
9 D. at any time prior to the completion of the bond year ending September 30, 2016,  
10 upon demonstration to the satisfaction of the Director of FAS that Office Space Lease Revenue  
11 (net of any landlord expenses pass-through, if any) during the preceding twelve-month period  
12 has produced coverage of at least equal to 1.00 times Annual Debt Service, the Director of  
13 FAS, acting in his sole discretion, may give notification pursuant to Section 4.1(b)(3) of the  
14 Guarantee Agreement to the Lockbox Agent that the condition triggering the alternate flow of  
15 funds under that section no longer applies and the Lockbox Agent may resume application of  
16 lockbox funds in accordance with Section 4.1(b)(2), including the release of any amounts that  
17 may have accumulated in the Lockbox and are not necessary for debt service. However, such  
18 notice shall not constitute or be construed as a waiver of the Coverage Requirement, which  
19 may be waived only in accordance with Section 2A of this ordinance, nor shall it limit any  
20 remedy available to the City for future noncompliance with covenants under the Guarantee  
21 Agreement.  
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24 E. The Council further authorizes the Director of FAS to consent to (1) the  
25 application to the payment of debt service on the MDA Bonds of all amounts which, as of the  
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effective date of this ordinance, are on deposit in the Lockbox, and (2) the release by the Lockbox Agent, to be applied in accordance with the Lockbox Agent's procedures under Section 4.1(b)(2)(v) of the Guarantee Agreement, of that amount of Office Space Lease Revenue that is attributable to landlord expenses pass-through, which amount is to be equal to the difference between the "gross rent" (Column A) and the "net rent" (Column B), as shown on the substitute Exhibit A-3 to the Guarantee Agreement, which is attached to this Ordinance as Attachment 1 and incorporated by this reference. The Director of FAS shall not provide the consents allowed under this paragraph unless and until SAM has provided the Lockbox Agent with a monthly schedule of gross and net rents due, reflecting the annualized data shown in Attachment 1, which monthly schedule shall be in a form acceptable to the Director of FAS and the City's bond counsel.

Section 3. Execution of Waivers, Consents and Clarifications on Behalf of City. The Director of FAS is authorized to sign such documents on behalf of the City as he determines, prior to execution, are necessary, appropriate, or desirable to grant the waivers, consents, clarifications and interpretations described in this ordinance and to carry out the terms and provisions of this ordinance.

Section 4. Amendment or Modification of Guarantee Agreement. This ordinance does not authorize modifications or amendments to the Guarantee Agreement, except (A) to the extent of the clarifications of interpretation expressly set forth herein which clarifications are memorialized in writing executed by or on behalf of the City, SAM and MDA; (B) the schedule attached as Exhibit A-3 thereto shall be modified to reflect the aggregate revenues from the leases for all tenants consented to, consistent with this ordinance (which substitute

Exhibit A-3 shall be in the form that is attached to this Ordinance as Attachment 1); and (C) to substitute for term "Director of Finance" in the Guarantee Agreement and the related Security Documents the term "Director of Finance and Administrative Services."

Section 5. Ratify and Confirm. Any act taken consistent with the authority of this ordinance taken prior to its effective date is hereby ratified and confirmed.

Section 6. Headings and Definitions. The section headings in this ordinance are used for convenience only and shall not constitute a substantive portion of this ordinance. Reference is made to the Guarantee Agreement for the definitions of terms capitalized and not defined in this ordinance.

Section 7. Effective Date. This ordinance shall take effect and be in force 30 days from and after its approval by the Mayor, but if not approved and returned by the Mayor within 10 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the \_\_\_\_ day of \_\_\_\_, 2012, and signed by me in open session in authentication of its passage this \_\_\_\_ day of \_\_\_\_, 2012.

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved by me this \_\_\_\_ day of \_\_\_\_, 2012.

\_\_\_\_\_  
Michael McGinn, Mayor

Filed by me this \_\_\_\_ day of \_\_\_\_, 2012.

\_\_\_\_\_  
Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Substitute Exhibit A-3 to Amended and Restated Guarantee Agreement

**Attachment 1**  
**Substitute Exhibit A-3 to Amended and Restated Guarantee and Reimbursement Agreement**

*Dated April \_\_, 2012*

Bond Year (ending Sept. 30)	A	B	C	D	Coverage Ratio	
	Gross Rent <sup>(1)</sup>	Net Rent <sup>(2)</sup>	MDA Lease Revenue <sup>(3)</sup>	Annual Debt Service <sup>(4)</sup>	(5(a))	(5(b))
2011	\$ 298,464	\$ 176,637	\$4,423,974.96	\$4,423,975.00	1.00 x	0.04 x <sup>(6)</sup>
2012	3,645,166	3,151,890	4,425,225.00	4,425,225.00	1.00	0.71 <sup>(6)</sup>
2013	4,996,404	4,438,856	4,427,475.00	4,427,475.00	1.00	1.00
2014	5,122,564	4,548,032	4,425,474.96	4,425,475.00	1.00	1.03
2015	5,299,188	4,707,671	4,424,225.04	4,424,225.00	1.00	1.06
2016	5,299,188	4,901,357	4,428,474.96	4,428,475.00	1.00	1.11
2017	5,299,188	4,962,226	4,427,964.96	4,427,725.00	1.00	1.12
2018	5,299,188	5,212,433	4,426,974.96	4,426,975.00	1.00	1.18
2019	5,299,188	5,299,188	4,425,975.00	4,425,975.00	1.00	1.20
2020	5,299,188	5,299,188	4,424,475.00	4,424,475.00	1.00	1.20
2021	5,299,188	5,299,188	4,427,225.04	4,427,225.00	1.00	1.20
2022	5,299,188	5,299,188	4,428,725.04	4,428,725.00	1.00	1.20
2023	6,102,092	6,102,092	4,428,725.04	4,428,725.00	1.00	1.38
2024	6,503,544	6,503,544	4,426,974.96	4,426,975.00	1.00	1.47
2025	6,503,544	6,503,544	4,428,225.00	4,428,225.00	1.00	1.47
2026	6,503,544	6,503,544	4,426,974.96	4,426,975.00	1.00	1.47
2027	6,503,544	6,503,544	4,428,875.04	4,428,875.00	1.00	1.47
2028	6,503,544	6,503,544	4,427,062.56	4,427,062.50	1.00	1.47
2029	6,503,544	6,503,544	4,426,281.24	4,426,281.26	1.00	1.47
2030	6,503,544	6,503,544	4,426,018.80	4,426,018.76	1.00	1.47
2031	4,335,696	4,335,696	4,425,978.48	4,425,762.50	1.00	0.98 <sup>(7)</sup>

(1) "Gross Rent" equals total Office Space Lease Revenue.

(2) "Net Rent" equals gross Office Space Lease Revenue, less landlord expense pass-throughs. This is the amount available for calculation of the coverage ratio under the Coverage Requirement.

(3) "MDA Lease Revenue" is rent paid by SAM to the MDA, as reflected in Exhibit A-2 to the Guarantee Agreement.

(4) "Annual MDA Bond Debt Service" is reflected in Exhibit A-1 to the Guarantee Agreement.

(5) "Coverage Requirement" is defined in the Guarantee Agreement, to require, in each Bond Year:

(a) an amount of MDA Lease Revenue equal to at least 1.0 times Annual Debt Service [Column C ÷ Column D]; and

(b) Office Space Lease Revenue at least equal to 1.09 times Annual Debt Service (for so long as WAMU is the sole Office Space Tenant) or, in the event that any party other than WAMU enters into an Office Space Lease, an amount of Office Space Lease Revenue equal to at least 1.2 times Annual Debt Service. For purposes of calculating the Coverage Requirement, MDA Lease Revenue and Office Space Lease Revenue exclude landlord expense pass-throughs, if any. [Column B ÷ Column D].

(6) Shortfall anticipated to be made up from SAM resources other than Office Space Lease Revenues, which may include the approximately \$581,000 in the Suspended Rents account within the "Lockbox," gifts, other revenues, borrowing against the Endowment, if necessary, and other resources at its disposal.

(7) Amounts on deposit in the Reserve Account will be used for the final principal and interest payment on the Bonds.